



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-55

CENTRAL BANK, PETITIONER

v.

JAMES E. SMITH, COMPTROLLER OF THE
CURRENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF PETITIONER IN REPLY TO THE
MEMORANDUM FOR THE COMPTROLLER OF
THE CURRENCY IN OPPOSITION

LAWRENCE G. WICKERT
HAROLD H. FUHRMAN
JOHN P. ROEMER

Attorneys for Petitioner,
CENTRAL BANK

4455 West Bradley Road
Milwaukee, Wisconsin 53223

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As its brief in reply to the Memorandum for
the Comptroller of the Currency in opposition to
the Petition for a Writ of Certiorari to the United
States Court of Appeals.

1. The Petitioner adopts and incorporates
herein as though fully set forth at length, its
Petition for Re-hearing filed with the Circuit
Court of Appeals and printed in full as petitioner's
Exhibit No. 4, Appendix Page 120 of the petition.

2. The Court's attention is invited to the fact that in Camden Trust Co. v. Gidney CCDC, 301 F(2) 521, the Circuit Court for the District of Columbia, based entirely on the facts presented in that case held that Haddenfield National Bank had acquired an affiliate status only and not the status of a branch.

The Court's attention is further invited to Whitney National Bank v. Bank of New Orleans, 323 F(2) 290, wherein the same court, based on the facts presented in that case, distinguished its prior decision in Camden, holding that Whitney National Bank in Jefferson Parish had acquired a branch status, although it was an affiliate in form.

It will be observed that in neither of these cases has the Circuit Court of Appeals given consideration to the provisions of 12 U. S. C. A. 36(f). Each has been decided on the facts presented in the respective cases without reference to the federal definition of a "branch".

3. It is submitted that this Court should grant certiorari and establish the necessary guidelines for the purpose of enabling courts to determine on a factual basis the factors to be considered in determining when an affiliate becomes a branch in fact under 12 U. S. C. A. 36(f), containing the federal statutory definition of a branch.

4. It is further submitted that under the Administrative Procedure Act, 5 U. S. C. A. 706, the reviewing court must decide all relevant questions of law, interpret constitutional and statutory provisions and hold unlawful and set aside

any agency action which is in excess of statutory jurisdiction, authority or limitations, or short of statutory right. This constitutes a congressional mandate to the court to review the legality of the agency action, regardless of when and where an issue of legality is raised. In fact, the district court conceded that the branch banking issue was properly before that court. Likewise, it is properly before this court.

CONCLUSION

The Petition for Certiorari should be granted.

Respectfully submitted,

LAWRENCE G. WICKERT
HAROLD H. FUHRMAN
JOHN P. ROEMER

Attorneys for Petitioner,
CENTRAL BANK

P. O. ADDRESS:

4455 West Bradley Road
Milwaukee, Wisconsin 53223